IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2765 OF 2006

Hiraman Bama Mhatre ....Petitioner
V/s
Smt.Manubai Sitaram Patil & Anr. ... .Respondents.

Mr.S.V.Gavand, Adv. For the petitioner.

Mr.A.H.Fatangare, Adv. For the respondent Nos.1A to 1D.

CORAM: A.P.DESHPANDE, J.
14/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioner is original plaintiff who instituted a suit on 4.10.01 in the Court of Civil Judge, Junior Division vide Civil Suit No.128/01. On 11.3.02 the petitioner filed the amendment application. The suit is for declaration of easementary rights in regard to house property bearing No.78. It is averred in the plaint that the gate is in the middle of northern compound wall whereas by the proposed amendment it is tried to be pleaded that it is on the north-east corner of the said wall. The amendment application was filed even before the respondent-defendant filed the written statement. The trial Court rejected the application on the ground that the proposed amendment changes the nature of the suit and that it is belatedly filed. Change of location of the gate by the proposed amendment does not change the nature of the suit and the application was filed even before the filing of the written statement. Hence it is obvious that the application for amendment was not filed belatedly. The impugned order rejecting the application being

wholly unsustainable is quashed and set aside. Amendment Application is allowed. Having regard to the fact that the suit is pending since the year 2001 I direct the trial Court to decide the suit as expeditiously as possible preferably within a period of six months from today. Rule made absolute in above terms.

14.9.07